

# **Exhibit 10**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

HERMÈS INTERNATIONAL and )  
HERMÈS OF PARIS INC., )  
 )  
Plaintiffs, )  
 )  
vs. ) No.  
 ) 1:22-CV-00384-JSR  
MASON ROTHSCHILD, )  
 )  
Defendant. )  
----- )

September 23, 2022  
9:32 a.m.

Deposition of BLAKE GOPNIK, held at the  
offices of Baker & Hostetler LLP, 45  
Rockefeller Plaza, New York, New York,  
pursuant to subpoena, before Laurie A.  
Collins, a Registered Professional Reporter  
and Notary Public of the State of New York.

1 Gopnik

2 and then counsel may proceed.

3 B L A K E G O P N I K ,

4 called as a witness, having been duly sworn

5 by the notary public, was examined and

6 testified as follows:

7 EXAMINATION BY

8 MR. FERGUSON:

9 Q. Good morning. Can you please state  
10 your full name for the record? 09:34:13

11 A. Blake Gopnik.

12 Q. Dr. Gopnik, have you been deposed  
13 before?

14 A. No.

15 Q. Have you ever testified in court 09:34:23  
16 before?

17 A. No.

18 Q. Do you have an understanding of what's  
19 going to be taking place at this deposition today?

20 A. I believe I do. 09:34:33

21 Q. And is that understanding based on  
22 information provided to you in conversation with  
23 the counsel representing you today?

24 A. Yes.

25 Q. I'm just going to review a few ground 09:34:44

1 Gopnik

2 of economics?

3 A. I have some expertise in philosophy in  
4 general which allows me to apply those to any  
5 field, including economics. 11:40:15

6 Q. Are you being offered as an expert in  
7 philosophy in this case?

8 MR. SPRIGMAN: Objection.

9 A. Insofar as that's a component in my  
10 expertise in art, yes. 11:40:26

11 Q. Did you adopt the categories art-only  
12 NFT and digital brand NFTs in your report?

13 MR. SPRIGMAN: Objection.

14 A. I refer to the categories. I would not  
15 say that I adopted them. 11:41:15

16 Q. I'm going to refer to you again to page  
17 11, the sentence that begins, Using the language  
18 of Kominers' report -- just to be clear, I'm  
19 starting on the third line.

20 A. Yes, I see that. 11:41:50

21 Q. Let me start that question again.  
22 Referring to page 11, the sentence that begins on  
23 the third line. Using the language of economists  
24 report, you could say that as an artist Rothschild  
25 deliberately rejects the restricted world of 11:42:07

1 Gopnik

2 art-only NFTs.

3 I have argued in The Times that its  
4 artistic potential is close to nonexistent and  
5 instead ventures into the world of digital brand 11:42:25  
6 NFTs that seems to have real leverage in our  
7 current reality.

8 In this sentence are you adopting the  
9 categories of art-only NFTs and digital brand  
10 NFTs? 11:42:46

11 MR. SPRIGMAN: Objection.

12 A. Quite the opposite. By using the  
13 phrase "using the language of the Kominers'  
14 report," I'm making it quite clear that I think  
15 that is particular to him. And in fact quite 11:42:54  
16 clearly I say that the artistic point of  
17 Rothschild is to deny that distinction, in a  
18 sense.

19 That sentence is partly meant to show  
20 the distinction is not accurate. And it's in the 11:43:08  
21 language of the Kominers' report; it isn't  
22 something that exists outside of the Kominers'  
23 report.

24 Q. Your report states that you have argued  
25 in The Times that the artistic potential of 11:43:32

1 Gopnik

2 art-only NFTs is close to nonexistent.

3 MR. SPRIGMAN: Objection.

4 Q. Is that correct?

5 MR. SPRIGMAN: Misstates the meaning of 11:43:44  
6 the report.

7 A. Could you read that back, please, the  
8 question.

9 (Record read.)

10 A. That parenthesis is oversimplifying my 11:44:03  
11 argument in The Times. I would need to explain at  
12 some length what I mean by "art-only NFTs." That  
13 is a very, very distilled version of my argument  
14 in The Times.

15 Q. So what do you mean by "art-only NFTs"? 11:44:20

16 A. NFTs that consistent -- NFTs are very  
17 complicated. NFTs that point only to images and  
18 are considered only insofar as those images  
19 represent the entire NFT are not interesting as  
20 works of art. 11:44:42

21 Q. Do NFTs that point only to images  
22 exist?

23 A. They do.

24 Q. In your report when you use -- when you  
25 refer to, quote, the world of "digital brand" 11:45:19

1 Gopnik

2 the works.

3 Q. Are you saying that a typical purchaser  
4 of NFTs today would have the understanding you  
5 just described? 12:31:52

6 MR. SPRIGMAN: Objection.

7 A. Some might; some might not.

8 Q. In your report you refer to MetaBirkins  
9 as Rothschild's title. Is it your understanding  
10 that he's the one that created that title? 12:32:19

11 A. My full understanding is that he chose  
12 the title from many different options presented to  
13 him, some of which would have come from his own  
14 mind and some not.

15 Q. Is it your understanding that 12:32:42  
16 MetaBirkins was a title proposed to him?

17 A. I'm just thinking for one second. I  
18 believe so, yes.

19 Q. And do you have an understanding of how  
20 it was proposed to him? 12:32:54

21 A. I believe that he solicited titles from  
22 acquaintances.

23 Q. Are you aware of Mason Rothschild  
24 developing any other NFT projects with meta in the  
25 title of the project? 12:33:37

1 Gopnik

2 8 of the document. It's Bates stamp number 1033.

3 A. Sorry, 1033.

4 MR. SPRIGMAN: At the bottom right,

5 1033. 02:22:10

6 A. I see.

7 MR. SPRIGMAN: Yeah.

8 Q. And refer to the sentence that states,  
9 You're not collecting it because of the picture of  
10 Babe Ruth on the baseball card; you're collecting 02:22:21  
11 it just because it's a collectible.

12 What did you mean by "collectible" in  
13 that context?

14 A. There are certain activities that are  
15 all about owning certain objects that for whatever 02:22:34  
16 bizarre reason the -- a group of people in the  
17 culture think is valuable, so stamps or baseball  
18 cards or in some cases great old master paintings.

19 Q. Can collectibles be art?

20 A. At the moment that they're 02:23:00  
21 collectibles, they're not art, which is why I  
22 mentioned great old master paintings. If you're  
23 collecting them in order to check a box and say, I  
24 own X, then in fact they're not functioning as art  
25 at that moment. 02:23:15





1 Gopnik

2 It's essentially philosophical  
3 practice, that art is a philosophical practice, a  
4 meta practice, and other objects, other images,  
5 other objects are functional objects within our 02:46:49  
6 world. Sorry.

7 Q. If an object is functioning to provide  
8 status, is it -- is that a functional use?

9 A. You just defined it as function. Yes,  
10 if it's doing a job, then it's functional. 02:47:07

11 Q. Okay. If someone purchases an item to  
12 provide status, is that a functional use?

13 MR. SPRIGMAN: Objection.

14 A. I would say that it was.

15 Q. When someone purchases a Marimekko 02:47:49  
16 dress, how can we tell whether they're purchasing  
17 it for a functional purpose or an artistic  
18 purpose?

19 A. Marimekko dresses aren't normally part  
20 of the discourses of art. The act of purchasing 02:48:04  
21 it, they would be unlikely to be purchasing it for  
22 artistic reasons. You'd have to see how they use  
23 it.

24 The purchase itself wouldn't tell you  
25 anything. But they could use it, for instance, to 02:48:16

1 Gopnik

2 Your report opens with you stating, In  
3 the following report, I show how the images and  
4 NFTs produced and sold by Mason Rothschild find  
5 their natural and obvious home among the artistic 02:55:03  
6 experiments carried out by modern artists over the  
7 last century.

8 In this sentence you refer to the  
9 images and NFTs. Is there a difference between  
10 the images and NFTs? 02:55:27

11 A. Yes, there is.

12 Q. And what's the difference?

13 A. Images are visual objects with  
14 qualities. They could be produced as JPEGs, in  
15 which case they'd be digital, in fact, digital 02:55:42  
16 files. But they have visual instantiation. They  
17 could be crayon drawings. They could be any  
18 number of things.

19 NFTs are non-fungible tokens, a  
20 particular kind of digital object on the 02:55:53  
21 blockchain. It's really -- they can be contracts.  
22 They have varied states of existence, but they're  
23 really a digital-only kind of phenomenon that's  
24 specific to the blockchain.

25 They can do all sorts of different 02:56:10

1 Gopnik

2 work, so it's hard to specify what an NFT is.

3 They can do -- have various relationships to

4 different kinds of objects or none at all.

5 Q. Is the image distinct from the NFT? 02:56:31

6 A. Yes.

7 Q. With respect to Mason Rothschild's  
8 MetaBirkins project, is MetaBirkins the name of  
9 the NFT, the image, or both?

10 A. It's hard to know what the name refers 02:56:53

11 to. I would say popularly speaking people would  
12 probably refer to the image and the NFT -- the  
13 image you might say is an image of -- it's very  
14 complicated because there's also a conceptual

15 object called the MetaBirkin, which is something 02:57:18  
16 that Mason Rothschild, and with assistance,  
17 thought of in his head that's also MetaBirkin.

18 But colloquially I think people might  
19 call the NFT the MetaBirkin NFT and the image the  
20 MetaBirkin image or something like that. 02:57:35

21 People confuse the two categories,  
22 which is why I wrote a large article in The New  
23 York Times about trying to sort out the  
24 categories.

25 Q. Do you agree with the statement that 02:58:09

1 Gopnik

2 Q. You gave the example of the Pak NFT  
3 project where the NFTs were business art because  
4 of the way they were sold. Can you give another  
5 example of NFTs that are business art? 03:09:31

6 A. Mason Rothschild's MetaBirkins is a  
7 good example. I'm not a huge expert -- I don't  
8 spend a lot of time in the metaverse, so I'm  
9 not -- I can't give you -- let me just think for a  
10 second, let me, before I speak if I can think of 03:09:49  
11 another example off the top of my head.

12 There have been NFTs produced in the  
13 wake of Andy Warhol that relate to Andy Warhol.  
14 And because Andy Warhol is such a famous business  
15 artist, those seem to me to be functioning in that 03:10:12  
16 context as well.

17 Q. Can you name any NFTs other than Pak  
18 NFTs and MetaBirkins NFTs that are business art?

19 A. I haven't done enough research to tell  
20 you one way or the other. Those are the two 03:10:27  
21 examples that I've studied.

22 Q. In your prior answer where you said,  
23 I'm not a huge expert, did you mean you're not a  
24 huge expert in NFTs?

25 MR. SPRIGMAN: Objection. 03:10:40

1 Gopnik

2 A. I'm not a computer scientist, yeah.  
3 I'm -- the specifics are a little foggy even for  
4 me or mostly for me.

5 Q. Are you not an expert in the metaverse? 03:10:49

6 MR. SPRIGMAN: Objection.

7 A. I am not an expert on the metaverse. I  
8 have some knowledge of it.

9 Q. NFTs cannot be changed because they  
10 live on the blockchain. Do you agree with that 03:11:17  
11 statement?

12 MR. SPRIGMAN: Objection.

13 A. That is my understanding. Non-fungible  
14 tokens by definition live on the blockchain. And  
15 as a result of living on the blockchain, my 03:11:31  
16 impression is -- my understanding is they cannot  
17 be changed once they are on the blockchain.

18 It depends on what you mean by  
19 "change." There are many different senses in  
20 which something can be changed. But the code 03:11:42  
21 itself cannot be changed, is my understanding.  
22 Their meaning could change.

23 Q. The image associated with an NFT, is  
24 that a digital file that typically lives on a hard  
25 drive? 03:12:10

1 Gopnik

2 A. I happen not to have, but it wouldn't  
3 affect whether I thought it was satire or not.  
4 Most social media comments on most art miss the  
5 point of the art. 03:29:22

6 Q. Are the MetaBirkin NFTs, the  
7 MetaBirkins NFTs, the actual NFTs, business art?

8 A. They do seem to function as that, yes.  
9 That's the argument of my report.

10 Q. How do the MetaBirkins NFTs function as 03:29:47  
11 business art?

12 A. By virtue of participating in the world  
13 of business and deluxe commodities, commenting on  
14 it, seeming to refer to it and also to have some  
15 distance from it. 03:30:14

16 I'm trying to think. It's late in the  
17 day for me to do sophisticated art criticism.

18 They have various markers that show  
19 them interacting with that world but also having a  
20 certain distance from that world. Those are 03:30:27  
21 hallmarks of business art.

22 They seem to also, very importantly, be  
23 continuous with other works in the history of  
24 business art in the twentieth century. They seem  
25 to live naturally and participate in dialogue with 03:30:39

1 Gopnik

2 those other works. In particular their pop art  
3 qualities make you think immediately of Warhol and  
4 his legacy.

5 Q. Is the fact that MetaBirkins were 03:30:58  
6 traded and what that trading means part of their  
7 status as business art?

8 MR. SPRIGMAN: Objection.

9 A. Yes, I would say they are. The one --  
10 one -- not the only one but one component in 03:31:13  
11 business art is the way in which it actually  
12 participates in the financial world, just like the  
13 investors, the artists who invest in money as a  
14 form of art as an artistic medium in the late  
15 1960s. That can be one component in business art. 03:31:27

16 Q. How is trading NFTs as a form of art  
17 different from trading NFTs as a commercial  
18 activity?

19 MR. SPRIGMAN: Objection.

20 A. The actual trading -- it's -- let me 03:31:46  
21 think if I can say this clearly to you.

22 The act of trading you could say is the  
23 art supply. So there are going to be people, for  
24 instance, who might use oil paints to paint a wall  
25 and they're not using it to make art. Other 03:32:02



1 Gopnik

2 A. Routinely.

3 Q. When an artwork is resold, does the  
4 artist know who the purchaser on the resale is?

5 MR. SPRIGMAN: Objection. 04:06:56

6 A. That depends on the jurisdiction.  
7 There is an awed street [phonetic] in lots of  
8 jurisdictions, including I think an unenforced  
9 awed street in California that does allow the  
10 artist to know that. 04:07:08

11 Q. In jurisdictions that don't have that  
12 law, can art be transferred without the artist  
13 knowing it?

14 MR. SPRIGMAN: Objection.

15 A. I think that would depend on the 04:07:15  
16 contract that came with the sale. There is  
17 something called the Seth Siegelau contract that  
18 comes attached to some works of art that specifies  
19 that the collector has to follow certain rules in  
20 reselling it, including giving a percentage to the 04:07:33  
21 artist. A transaction -- it's like any other  
22 transaction -- can come with a contract that  
23 permits or doesn't permit all sorts of things.

24 Q. On the blockchain is it true that it's  
25 always possible to identify the wallet that holds 04:08:07

1 Gopnik

2 the NFT?

3 MR. SPRIGMAN: Objection.

4 A. I'm not an NFT expert let alone a  
5 blockchain expert. My understanding is it is 04:08:16  
6 normally but much more difficult than people  
7 think, and there are various ways of defrauding  
8 the system, much more than people realize. I have  
9 read people saying it's not nearly as secure.  
10 It's much harder to find that information than 04:08:30  
11 people imply.

12 Q. It's hard to find the wallet that holds  
13 the NFT?

14 A. I gather there are various -- I'm not  
15 an expert at all, but I gather there are ways of 04:08:39  
16 camouflaging who owns the wallet, who controls the  
17 wallet. There are -- and access can be more  
18 difficult than one expects it to be. That's my  
19 understanding. Again, I'm not a professional  
20 computer scientist. 04:08:56

21 Q. Are you familiar with the concept of  
22 transformative utility in the context of the NFT  
23 market?

24 MR. SPRIGMAN: Objection.

25 A. Transformative utility. I'd have to 04:09:04

1 Gopnik

2 Q. Did he ever operate a magazine that he  
3 called Campbell's Soup?

4 MR. SPRIGMAN: Objection.

5 A. Not that I know of. 04:17:00

6 Q. You've written a lot of pages about  
7 him. Did you come across that magazine?

8 A. In my research, I did not, I admit.

9 Q. Did he have a name for his studio?

10 A. No. 04:17:18

11 Q. Did he operate something called The  
12 Factory?

13 A. No.

14 Q. In popular cultural is it believed that  
15 Andy Warhol operated something called The Factory? 04:17:25

16 A. That is one of many misconceptions  
17 about Andy Warhol's studios, plural.

18 Q. Did he ever use the term "factory" as  
19 part of his operations?

20 A. He absolute did, yes. 04:17:41

21 Q. What did The Factory refer to?

22 A. The Factory referred to one particular  
23 space on 47th Street -- well, I'm sorry, I'm  
24 wrong.

25 Andy Warhol tended to use the phrase 04:17:52

**Gopnik**

"the factory" to refer to a space on 47th Street at -- between Third and Second Avenue that was occupied between mid to late January of 1964 and I believe January 1st of 1968. I can give you the measurements of the space if you'd like.

The public uses the phrase "The Factory" in many ways, including many that are incorrect. Andy Warhol actually objected to some uses of the phrase "The Factory" to refer to his studio.

Q. How did Andy Warhol use the space on 47th Street that you just described?

A. He used it to make art. It was his studio, I'm sorry. 04:18:35

Q. And did he refer to the studio as The  
Factory?

A. On some occasions he did.

Q. Did he ever call it Campbell's Soup?

A. Not to my knowledge. 04:18:47

Q. Andy Warhol had a proposed project called the Andymat; is that correct?

A. That is correct.

Q. What is the Andymat?

A. The Andymat was in theory going to be a 04:19:05

1 Gopnik

2 There's usually -- it takes a bunch of  
3 different people to finally come up with something  
4 out there. I assume there's a technician to mount  
5 just in charge of literally mounting them on 04:50:58  
6 whatever server they're living on.

7 Q. In your report you reference that you  
8 had seen a number of documents that were -- that  
9 have Rothschild Bates stamps. That all appears on  
10 page 3 of your report. 04:51:13

11 A. Yes.

12 Q. A number of those documents you  
13 reference -- in fact, I believe most if not all of  
14 them -- involve communications with Mr. Rothschild  
15 and Mark Design? 04:51:22

16 A. Yes, that's right.

17 Q. And do you have an understanding of the  
18 role of Mark Design in creating the MetaBirkin  
19 images associated with MetaBirkin NFTs?

20 MR. SPRIGMAN: Objection. 04:51:34

21 A. Yes, his role in the production of  
22 them, I'd say.

23 Q. And what was his role in production?

24 A. Well, I'd have to look at them in  
25 detail. He seemed to play several different 04:51:41

1 Gopnik

2 roles. He was in a rich, collaborative  
3 relationship. He was functioning as a high-level  
4 studio assistant. That's what studio assistants  
5 do.

04:51:53

6 Q. Is business art recognized as a genre  
7 in the field of art criticism?

8 MR. SPRIGMAN: Objection.

9 A. Yes, it goes by various different  
10 names. Most genres do. It's also called commerce 04:52:49  
11 by artist. Some people might call it a branch of  
12 relational aesthetics. But it's well recognized  
13 as a movement or component in the history of  
14 contemporary art. There have been exhibitions  
15 about it; there are books about it. 04:53:04

16 Q. Is commerce by artists the same thing  
17 as business art?

18 A. There is no specific definition of  
19 business art or of commerce by artists. There are  
20 elaborate -- you know, there are a set of, as it 04:53:15  
21 were, Venn diagrams.

22 Different people might have slightly  
23 different ways. That's true of minimalism, pop  
24 art. Name any kind of art you could name, and  
25 there would be different ways of thinking about it 04:53:27

1 Gopnik

2 between Mr. Rothschild and Mark Design. It's one  
3 of the exchanges that you've identified in your  
4 report. Is this an exchange you reviewed in  
5 preparing your report?

05:02:07

6 A. I believe so. It seems extremely  
7 similar to it. I'm not -- I haven't done a  
8 comparison of the two, but this does look like the  
9 document that I saw.

10 Q. I'm referring you to an exchange that  
11 begins on Rothschild8419 and continues on to the  
12 next page. I'll start with messages from  
13 Rothschild to Mark Design. At the middle of 8419  
14 Rothschild says, Let me know what you think about  
15 for compensation as well. Next message: This  
16 could be a huge product -- project.

05:02:21

05:02:52

17 Mark Design replies, Let's go with the  
18 percentage after sale as I am too busy to even  
19 think about a number. XD -- I imagine that's an  
20 emoji. All right. I cleared my schedule for  
21 three days. Let's print some money.

05:03:19

22 Does that statement, "let's print some  
23 money," indicate to you in any way whether this is  
24 a business art project?

25 MR. SPRIGMAN: Objection.

05:03:36

1 Gopnik

2 A. No, it tells me nothing one way or the  
3 other.

4 Q. And why is that?

5 A. Because all artists want to make money 05:03:40  
6 off their work, so it could be an incredibly dull  
7 painting of a seascape or it could be the most  
8 interesting avant-garde video business art  
9 project. The fact someone wants to make money off  
10 of it tells me nothing. 05:03:54

11 MR. FERGUSON: I have no further  
12 questions.

13 MR. SPRIGMAN: Okay. Jerry, I just  
14 want to note for the record before we leave  
15 that the "let's print some money" appears to 05:04:02  
16 be a statement from Mark Design to Mason  
17 Rothschild. Did you suggest otherwise?

18 MR. FERGUSON: Yes. I thought I made  
19 that clear.

20 MR. SPRIGMAN: No. 05:04:11

21 Q. That statement, "let's print some  
22 money," was from Mark Design to Mason Rothschild.  
23 Does that change your answer?

24 A. I had thought it was the opposite.

25 Q. Okay. 05:04:19



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Gopnik

A. Let me think if it changes.

Only to say that everyone wants to  
print some money. In this case Mark Design would  
like to make some money. I would also like to 05:04:36  
make some money. I don't think that tells you  
anything about much of anything in the case of  
anyone doing anything.

MR. SPRIGMAN: Okay.

MR. FERGUSON: Thank you very much for 05:04:45  
your time today.

THE WITNESS: Thank you.

MR. FERGUSON: Unless you have any  
questions, we can go off the record.

MR. SPRIGMAN: I don't believe I do. 05:04:52  
Let's stop.

MR. FERGUSON: Okay. Great.

MR. SPRIGMAN: Thanks very much.

(Continued on following page.)

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C E R T I F I C A T E

STATE OF NEW YORK )

: ss.

COUNTY OF NEW YORK )

I, LAURIE A. COLLINS, a Registered  
Professional Reporter and Notary Public  
within and for the State of New York, do  
hereby certify:

That BLAKE GOPNIK, the witness whose  
deposition is hereinbefore set forth, was  
duly sworn by me and that such deposition  
is a true record of the testimony given by  
the witness.

I further certify that I am not  
related to any of the parties to this  
action by blood or marriage and that I am  
in no way interested in the outcome of this  
matter.

IN WITNESS WHEREOF, I have hereunto  
set my hand this 27th day of September  
2022.



LAURIE A. COLLINS, RPR